



## II. FINDINGS OF FACT

2.1 Appellant Michael Reutimann is an Instrument Maker III in the Physics Department and a permanent employee for Respondent University of Washington. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on April 1, 2002.

2.2 Appellant works for the Physics Department in the Instrument Shop as an Instrument Maker III. Prior to his reduction-in-force, Appellant was an Instrument Maker Lead with responsibility for assigning, instructing and checking the work of other Instrument Makers. Appellant also performed instrument-making duties. Appellant is highly regarded in his field and he is considered a highly skilled instrument maker/machinist.

2.3 On July 1, 2001, Linda Nelson became the Administrator for the Department of Physics. Ms. Nelson is responsible for overseeing the Cost Center which includes the Instrument Shop. The Cost Center provides a number of specialized services to the University's various departments, is self-supporting and charges fees to users of the services. The Cost Center establishes the schedule of charges for the various work performed by the different shops, including the Instrument Shop. Fees are used to pay all costs and overhead for running the Cost Center.

2.4 When Ms. Nelson became the Administrator, the Instrument Shop employed an Instrument Maker Supervisor, an Instrument Maker Lead, and four Instrument Makers.

2.5 John Roze was the Instrument Maker Supervisor. In July 2001, Mr. Roze announced that he would be retiring in early 2001. Ms. Nelson engaged in subsequent conversation with her dean about restructuring the Instrument Shop after Mr. Roze' retirement. She recommended that the

Instrument maker Supervisor position be eliminated and that an Instrument Shop Manager position be created.

2.6 The department subsequently created a new position titled Manager of Program Operations (working title known as Manager, Instrument Shops). After recruiting and interviewing for the position, Ms. Nelson hired and appointed Michael Vinton effective September 2001.

2.7 After his appointment, Mr. Vinton and managers of Instrument Shops throughout other higher education institutions worked with their various Human Resources Departments in an effort to revise and update the Instrument Maker class series to better reflect the work being performed by the Instrument Makers and to compensate them accordingly. Consequently, a class revision proposal was submitted to the Department of Personnel for review.

2.8 As the Instrument Shop Manager, Mr. Vinton began to perform a number of the lead duties previously performed by Appellant. In September 2001, Appellant performed 41 hours of lead work; in October he performed 4 hours; in November he performed 3 hours; in December he performed 8 hours; and in January he performed 3 hours of lead work.

2.9 Ms. Nelson was responsible for drafting the department's budget. In July 2001, Ms. Nelson drafted a budget proposal, in which she estimated that the Instrument Makers would receive a 10 percent raise if the Department of Personnel adopted their class series proposal. Ms. Nelson also calculated what the impact would be to the hourly rate charged by the Cost Center if the proposed Instrument Maker class revisions were adopted.

1 2.10 Ms. Nelson also feared that the Cost Center would lose customers to more competitive  
2 instrument making shops if their rates continued to increase. Ms. Nelson testified that the hourly  
3 rate charged by the Instrument Shop from April 2000 through July 2001 was \$58. Ms. Nelson, in  
4 anticipation of the 10 percent salary increase which would result from the adoption of the new class  
5 series, established the hourly rate of \$66.17 for August 2001 through July 2002, taking into account  
6 a 10 percent salary increase for all of the Instrument Maker positions.

7  
8 2.11 Ms. Nelson and Mr. Vinton engaged in discussions on how to keep the Cost Center rates  
9 from rising too sharply in order to remain competitive. Based on feedback from Mr. Vinton, who  
10 wanted to reorganize his department by eliminating the lead position and adding an additional  
11 Instrument Maker position, Ms. Nelson determined that a full-time lead position was not the best  
12 use of the department's resources. Rather, she felt that the Instrument Shop was better served by  
13 adding an additional Instrument Maker III position. Based on their estimates, they concluded that  
14 eliminating the lead position would reduce the projected 02-03 shop hourly rate and that an  
15 additional Instrument Maker III could perform more billable hours when not performing  
16 maintenance or training.

17  
18 2.12 In January 2002, Ms. Nelson received a memorandum addressed to all faculty, staff and  
19 students that discussed the economic recession in the state of Washington, the state budget, and the  
20 Governor's proposed solutions to the budget shortfalls. The memo anticipated that there would be a  
21 decline in state support for higher education and encouraged all departments to consider what cuts  
22 could be made to their individual budgets. Ms. Nelson began to consider her budget reduction  
23 options.

1 2.13 Effective January 10, 2002, the Department of Personnel adopted the modifications to the  
2 Instrument Maker class series. As a result, the Instrument Makers were reallocated to the new  
3 Instrument Maker 3 level, which resulted in a 12.5 percent salary increase. The salary increase was  
4 2.5 percent higher than Ms. Nelson had anticipated. For this reason, Ms. Nelson performed  
5 additional cost estimates using the increased Instrument Maker III salary. Ms. Nelson figured that  
6 the rise in salaries increased the hourly rate to \$70.68, if the lead position were retained. She also  
7 estimated that the rate would only rise to \$68.74, if the lead position were eliminated.

8  
9 2.14 After considering information she received from Mr. Vinton that there was insufficient work  
10 to keep a lead position and after reviewing her cost estimates, Ms. Nelson determined that the  
11 department should be reorganized by eliminating the lead position. Ms. Nelson also felt that the  
12 elimination of the lead position was necessary in order to keep the hourly costs as low as possible.  
13 Eliminating the lead position resulted in a \$3,362 savings per year to the department's budget.

14  
15 2.15 On February 4, 2002, Mr. Vinton informed Appellant the department was planning to  
16 eliminate his lead position due to insufficient lead work duties and the ongoing review of the  
17 budget.

18  
19 2.16 By letter dated February 8, 2002, Craig J. Hogan formally advised Appellant that his  
20 position as an Instrument Maker lead was being eliminated because of a "lack of funds and/or lack  
21 of work and/or good faith reorganizations," effective March 1, 2002. Respondent provided  
22 Appellant with a layoff option selection form that listed an Instrument Maker 3 as his employment  
23 option. Appellant selected and was placed in a position as an Instrument Maker III.

### III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that in mid-January 2002, the department was faced with two stark facts: 1) a grim budget outlook and 2) feedback from Mr. Vinton that Appellant was not performing lead work. Respondent argues that the department appropriately took these factors into consideration when making the decision to eliminate Appellant's Instrument Maker Lead position. Respondent argues that the department had a concern about keeping costs down in order to maintain the business of their customers. Respondent acknowledges that the budget was not reduced, but asserts a difference of two dollars per hour was important for the department in order to maintain a competitive hourly rate. Respondent asserts that in order to maintain a lower cost per hour, it was necessary to eliminate Appellant's lead position and create an additional Instrument Maker 3 position that could produce more billable hours. Respondent acknowledges that Appellant was a great instrument maker, but contends the department could not afford to keep him in a lead position because he was not legitimately performing lead duties. Therefore, Respondent contends that Appellant's reduction-in-force was the result of a good faith reorganization, and that his appeal should be denied.

3.2 Appellant argues that the elimination of his position as an Instrument Maker Lead was not done in good faith or because of a lack of funds. Appellant asserts that his lead position was eliminated in retaliation for his candid nature and because of disagreements he had with Mr. Vinton. Appellant asserts that the department's claims of a declining budget were only an excuse used to foster and support their decision to eliminate his position. Appellant argues that the Instrument Maker III salaries did not become effective until January 15, 2002, therefore, the total salaries during fiscal year 2001-02 would have been approximately \$15,000 less than originally budgeted. Appellant asserts that most of the rise in the shop rate was due to a reduction in billable hours because of fewer hours worked by temporary employees and due to new machinery purchased by

1 the department. Appellant claims that in this case, Respondent failed to act in good faith and that  
2 his appeal should be granted.

#### 3 4 IV. CONCLUSIONS OF LAW

5 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
6 herein.

7  
8 4.2 In an appeal of a reduction-in-force, Respondent has the burden of proof. WAC 358-30-  
9 170. Respondent has the burden of proving by a preponderance of the credible evidence that it laid  
10 the employee off for the reason stated in the RIF letter. O’Gorman v. Central Washington  
11 University, PAB No. L93-018 (1995).

12  
13 4.3 It is not our function to determine whether the reorganization proposal itself was right or  
14 wrong, but only to determine if the reorganization was done in good faith. George v. Dep’t of  
15 Agriculture, PAB No L94-026 (1996).

16  
17 4.4 In Amundsen v. Dep’t of Labor and Industries, PAB Case No. L85-1 (1985), aff’d (Thurston  
18 Co. Super. Ct. No. 85-2-02185-9 (1987), the appointing authority determined, upon the  
19 recommendation of an assistant, that to accomplish the revised goals of his administration, a  
20 position could be better used if it was reallocated to another class. It is not the Board’s function to  
21 probe the mental processes by which the decision was reached, nor to substitute its judgment for  
22 that of the agency when there is a showing of reasonable basis for such decision.

23  
24 4.5 In Talbott and Hobson v. Dep’t of Social and Health Services, PAB Case Nos. L81-2 &  
25 L81-3 (Murphy, Hrgs, Exam.)(1981), the hearings examiner found that the reorganization was

1 effected after consideration of many factors affecting the efficiency of the overall unit, and not  
2 designed to inconvenience the two appellants whose positions were transferred as a result of the  
3 reorganization and consolidation.

4  
5 4.6 The issue here is whether Respondent complied with WAC 251-10-030(1) when it laid off  
6 Appellant because of a “lack of funds and/or lack of work and/or good faith reorganization for  
7 efficiency purposes.” WAC 251-10-030(1) permits an appointing authority to layoff or reduce the  
8 number of working hours or the work year of an employee because of a lack of funds, lack of work  
9 or good faith reorganization. There is no dispute that Appellant was not performing lead work a  
10 majority of his work time. Respondent has provided credible evidence that there was a legitimate  
11 lack of lead work in the Instrument Shop after Mr. Vinton was appointed as Manager and took over  
12 the lead duties previously performed by Appellant. This fact is supported by evidence that  
13 Appellant performed only 81 hours of lead work between October 17, 2001 and January 10, 2002.  
14 Furthermore, the evidence and testimony support that the decision to reorganize the department was  
15 done in good faith. However, there is no evidence to support that the elimination of the lead  
16 position resulted from a lack of funds. Nonetheless, Respondent has met its burden of proof that it  
17 complied with WAC 251-10-030(1) when it eliminated Appellant’s lead position due to a lack of  
18 lead work and good faith reorganization.

19  
20 4.7 There is no doubt that Appellant is highly regarded for his talent and work as an expert  
21 instrument maker. However, in this case, Respondent has shown a reasonable basis for the  
22 reorganization and the elimination of his lead duties. Furthermore, there is nothing in the record to  
23 support Appellant’s contention that the reorganization was a result of retaliation.

1 4.8 Respondent has met its burden of proof that Appellant's layoff was the result of a lack of  
2 work and good faith reorganization for efficiency purposes. Therefore, the appeal should be denied.  
3

4 **V. ORDER**

5 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Mike Reutimann is denied.  
6

7 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

8 WASHINGTON STATE PERSONNEL APPEALS BOARD  
9

10 \_\_\_\_\_  
11 Walter T. Hubbard, Chair  
12

13 \_\_\_\_\_  
14 Gerald L. Morgen, Vice Chair  
15

16 \_\_\_\_\_  
17 René Ewing, Member  
18  
19  
20  
21  
22  
23  
24  
25  
26